

Service Date: December 29, 2004

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF the Application	)	
of NorthWestern Energy's for Automatic	)	UTILITY DIVISION
Rate Adjustment and Tracking for Taxes	)	
and Fees	)	DOCKET NO. D2004.11.186
	)	ORDER NO. 6621

**INTERIM ORDER**

**Background**

1. On November 17, 2004, NorthWestern Energy ("NWE") filed an Application for Interim and Final Rate Adjustment ("Application") with the Montana Public Service Commission ("Commission"). NWE requested authority to increase certain rates and charges to recover increased Montana state and local taxes and fees. NWE represented that it needed to increase electric utility revenues by \$685,421 and natural gas utility revenues by \$173,409. NWE stated that § 69-3-308, MCA, permits "a public utility to file for automatic adjustment and tracking of Montana state and local taxes and fees paid by the utility."
2. On November 26, 2004, the Commission issued a Notice of Application, Determination of Error, Opportunity to Comment and to Request Hearing and Provisional Notice of Public Hearing ("Notice"). In the Notice the Commission stated, "the PSC has not determined whether the revised rate schedules properly include adjustments for the net change in federal and state income tax liability caused by the deductibility of state and local taxes and fees."

3. On December 8, 2004, in response to the Notice, the Montana Consumer Counsel (“MCC”) filed comments in this docket. The MCC urged the Commission to conclude that the revised rate schedules did not properly include adjustment for the net change in federal and state income tax liability. The MCC stated, “The Commission should require NWE to file rate schedules that do not remove the income tax deductibility adjustment.”

4. On December 8, 2004, in response to the Notice, NWE filed comments in this docket. The thrust of NWE’s comments was that no adjustment should be made to allowed revenue requirement due to the federal and state income tax effects. NWE asserted, “If 40% of the property tax adjustment is effectively disallowed because of a flawed assumption regarding the tax effect, the purpose of the tracker legislation will be significantly thwarted.”

### **Discussion**

5. Section 69-3-308(2)(a)(i), MCA, provides in pertinent part, “The commission shall allow a public utility to file rate schedules containing provisions for the automatic adjustment and tracking of Montana state and local taxes and fees, except state income tax, paid by the public utility. The resulting rate schedule changes must include: (A) adjustments for the net change in federal and state income tax liability caused by the deductibility of state and local taxes and fees . . . .”

6. The Commission has interpreted § 69-8-308(2)(a)(i)(A), MCA, to require a reduction in revenue requirement equal to the combined income tax rate multiplied by the change in state and local taxes and fees. *See In the Matter of Energy West Montana*, Docket No. D2003.12.165, Order No. 6556, ¶¶ 10 and 14 (April 16, 2004).

7. In calculating a proposed Tax Gross-Up Tax Expense Change, NWE used a tax rate of 39.39%. Application, Appendix A (Line 19 divided by Line 9).

8. The adjusted increase in revenue requirement for the electric utility is \$415,434 and for the natural gas utility is \$105,104. The table below illustrates the adjustments:

	<i>Electric Utility</i>		<i>Natural Gas Utility</i>	
	<i>NWE Proposal</i>	<i>As Adjusted</i>	<i>NWE Proposal</i>	<i>As Adjusted</i>
Net Incremental Taxes & Fees	\$685,421	\$685,421	\$173,409	\$173,409
Tax Adjustment at 39.39%	(0)	(\$269,987)	(0)	(\$68,305)
<b>Change in Revenue Requirement</b>	<b>\$685,421</b>	<b>\$415,434</b>	<b>\$173,409</b>	<b>\$105,104</b>

9. According to NWE's Application, \$1,256,115 of the total tax expense and \$209,553 of the increased tax expense allocated to the electric utility is attributable to increased Wholesale Energy Transaction ("WET") taxes. Application, Appendix A (Line 5 and Line 5 minus Line 2). Also according to NWE's Application, \$416,851 of the WET tax amount is attributable to Choice Customers. Application, Appendix G.

10. NWE has proposed that the increase in revenue requirement be collected through a uniform increase in applicable rates and charges. The Application does not contain information sufficient for the Commission to conclude whether or not a uniform increase will result in the shifting of Choice Customers' WET tax to Default Customers. The Commission will examine this issue before entering a final order in this docket.

### **Findings of Fact**

11. The incremental state and local taxes and fees not currently collected in electric utility rates is \$685,421. The incremental state and local taxes and fees not currently collected in natural gas utility rates is \$173,409.

12. The combined effective income tax rate for NWE is 39.39%.

13. The net incremental state and local taxes and fees after adjustment for changes in federal and state income tax liability not currently collected in electric utility rates is \$415,434. The net incremental state and local taxes and fees after adjustment for changes in federal and state income tax liability not currently collected in natural gas utility rates is \$105,104.

### **Conclusions of Law**

14. NWE provides electric and natural gas service within the State of Montana and as such in a “public utility” within the meaning of § 69-3-101, MCA.

15. The Commission properly exercises jurisdiction over NWE’s Montana rates, service and operations pursuant to Title 69, Chapter 3, MCA.

16. The Commission is required by § 69-8-308, MCA to allow a public utility to file rate schedules to recover increased Montana state and local taxes and fees.

17. Adjustments for increased Montana state and local taxes and fees must be reduced to account for the deductibility of state and local taxes and fees in calculating federal and state income tax liability.

### **Order**

1. NorthWestern Energy is authorized to increase on an interim basis rates and charges in Electric Tariff Schedules REDS-1, GSEDS-1, GSEDS-2, ISEDS-1 and

ELDS-1 by a uniform percentage to collect \$415,434 annually for service provided on or after January 1, 2005.

2. NorthWestern Energy is authorized to increase on an interim basis rates and charges in Natural Gas Tariff Schedules D-RG-1, D-GSG-1, D-RGCA-1, D-GSGCA-1, D-FTG-1, D-ITG-1, T-FUGC-1, T-FTG-1, T-ITG-1 and T-FSG-1 by a uniform percentage to collect \$105,104 annually for service provided on or after January 1, 2005.

3. NorthWestern Energy must file tariffs to implement the authority granted in this Order.

4. NorthWestern Energy must comply with all findings of fact and conclusions of law in this Order.

DONE IN OPEN SESSION at Helena, Montana on the 21<sup>st</sup> day of December, 2004 by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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BOB ROWE, Chairman

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THOMAS J. SCHNEIDER, Vice Chairman

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MATT BRAINARD, Commissioner

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GREG JERGESON, Commissioner

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JAY STOVALL, Commissioner

ATTEST:

Connie Jones  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

